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THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

March 25, 1996

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COMMISSION
SECRETARY

The Honorable Kenneth E. Bentsen, Jr.
U. S. House of Representatives
128 Cannon House Office Building
Washington, D. C. 20515-4325

Dear Congressman Bentsen:

Thank you for your letter dated February 5, 1996, regarding the Commission's policies for licensing 800 MHz Specialized Mobile Radio (SMR) systems. In your letter, you express concern that the Commission's proposals to auction spectrum for SMR licenses will adversely affect existing SMR licensees. In particular, you express concern that the proposed auctions would be detrimental to efforts by licensees to expand their use of 800 MHz frequencies to improve safety. In addition, you note that due to a suspension of applications processing that was imposed prior to this proposed auction, many existing licensees cannot improve their radio transmissions. You also request information about the auctioning of 800 MHz SMR licenses.

On December 15, 1995, the Commission adopted a First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making (First Report and Order) in PR Docket No. 93-144. The First Report and Order was adopted after consideration of extensive comments from all segments of the SMR industry, including comments from numerous small SMR operators. The Commission's decision also reflects months of work by Commission staff with SMR industry representatives in an effort to achieve consensus on key issues. As a result, the First Report and Order contains numerous provisions and proposals that are responsive to the concerns of existing SMR operators and those operating smaller systems, in particular. These include giving incumbent licensees greater flexibility within their existing service areas, allowing small businesses to pay auction bids in quarterly installments over the license term, and a proposal to designate the "lower 80" and General Category channels as an "entrepreneurs' block" for which only small businesses would be eligible. For your convenience and information, enclosed is a copy of the Press Release concerning the First Report and Order, which includes a summary of the principal decisions and proposals made.

The Commission's decision to auction 800 MHz SMR spectrum is consistent with Section 309(j) of the Communications Act, which sets forth certain criteria for determining when auctions should be used to award spectrum licenses. Pursuant to these criteria, auctions are to be used to award mutually exclusive initial licenses or construction permits for services

likely to involve the licensee receiving compensation from subscribers. The statute also requires that the Commission determine that auctioning the spectrum will further the public interest objectives of Section 309(j)(3) by promoting rapid development of service, fostering competition, recovering a portion of the value of the spectrum for the public, and encouraging efficient spectrum use. The Commission has concluded that auctioning of SMR licenses satisfies these criteria. In particular, we believe that auctions will minimize administrative or judicial delays in licensing, particularly in comparison to other licensing methods such as comparative hearings, lotteries (which are specifically prohibited by the statute if the service is auctionable), or "first-come, first-served" procedures. We note that the statute does not distinguish between new services (such as Personal Communications Services) and existing services in terms of whether initial licenses in a given service are auctionable.

Significantly, however, the Commission's decision to use auctions applies only to issuance of initial licenses in the service, and is not intended to affect rights afforded to licensees under existing authorizations. While we recognize that the high level of existing licensing in the SMR service raises additional concerns, we believe auctions are an appropriate licensing mechanism in such an environment. First, auctions will only be used in the event that there are competing applications for the same license. Second, where auctions do occur, we have adopted special provisions, including installment payments, designed to ensure that small businesses are able to compete in the auction and in the provision of SMR service.

In addition, in the First Report and Order, the Commission determined that the overwhelming majority of General Category channels are used for SMR as opposed to non-SMR service. In fact, our licensing records indicate that there are three times as many SMR licensees in the General Category channels as any other type of Part 90 licensee. The Commission therefore concluded that the most efficient use of the General Category channels would be to redesignate them exclusively for SMR use. Thus, the First Report and Order provided that in the future, only SMR service providers will be eligible for new licenses in the General Category pool. On October 4, 1995, the Wireless Telecommunications Bureau placed a freeze on the filing of new applications for General Category frequencies. The freeze was intended as a short-term measure to ensure that the successful resolution of the spectrum allocation issues raised in the rulemaking would not be compromised.

Notably, the Commission's decision also specifies that SMR service providers are no longer eligible to apply for licenses on Business or Industrial/Land Transportation channels. Moreover, the Bureau's freeze order does not affect the acceptance of new applications in the non-SMR bands, but only limits General Category applications. As a result, we anticipate that the First Report and Order will make more spectrum available for

The Honorable Kenneth E. Bentsen, Jr.

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licensees who are currently eligible, and will continue to be eligible, to apply in Business and Industrial/Land Transportation categories.

Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read 'Reed E. Hundt', with a large, stylized flourish at the end.

Reed E. Hundt
Chairman

Enclosure

Congressional

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CONGRESSIONAL CORRESPONDENCE TRACKING SYSTEM

02/08/96

LETTER REPORT

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Kenneth Bentsen

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REMARKS:

KENNETH E. BENTSEN, JR.
25TH DISTRICT, TEXAS

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Congress of the United States
House of Representatives

Washington, DC 20515-4325

February 5, 1996

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The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Dear Chairman Hundt:

I am writing you to request an explanation for your proposal to auction spectrum for SMR licenses. I have been contacted by constituents who are opposed to this proposal.

I am concerned that this proposal would be detrimental to efforts by licensees to expand their use of 800 MHz frequency to improve safety. Due to the freeze that was imposed prior to this auction, many existing licensees cannot improve their radio transmissions. I am also concerned that this auction will not give preference to those companies who use SMR licenses for private, non-commercial interests. I would appreciate learning more about when these scheduled auctions may occur and how bidders can participate in this auction process.

Thank you for your consideration. I look forward to your response. If I may be of further assistance on this or any other matter, please do not hesitate to contact me.

With kindest personal regards,

Sincerely,


Kenneth E. Bentsen, Jr.
Member of Congress

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